**IN THE SUPREME COURT OF GUAM**

# IN RE: REQUEST OF I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN RELATIVE TO THE POWER OF THE LEGISLATURE TO PRESCRIBE BY STATUTE THE CONDITIONS AND PROCEDURES PURSUANT TO WHICH THE RIGHT OF REFERENDUM OF THE PEOPLE OF GUAM SHALL BE EXERCISED

Supreme Court Case No. CRQ14-002

## OPINION

**Cite as: 2014 Guam 24**

Request for Declaratory Judgment pursuant to
Section 4104 of Title 7 of the Guam Code Annotated
Argued and submitted on August 4, 2014
Hagåtña, Guam

Appearing for Petitioner 32nd Guam Legislature:
Julian Aguon, *Esq.*
Law Office of Julian Aguon
Terlaje Professional Bldg.
194 Hernan Cortes Ave., Ste. 216
Hagåtña, GU 96910

Appearing for Respondent Guam Election Commission:
Jeffrey A. Cook, *Esq.*
Law Offices of Cunliffe & Cook
210 Archbishop Flores St., Ste. 200
Hagåtña, GU 96910

Appearing as *Amicus Curiae*:
Howard Trapp, *Esq.*
Howard Trapp Incorporated
200 Saylor Bldg.
139 Chalan Santo Papa
Hagåtña, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

**TORRES, C.J.:**

**[1]** Petitioner *I Mina'Trentai Dos Na Liheslaturan Guåhan* ("the Legislature") requests a declaratory judgment from this court regarding the validity of Public Law 32-134, which directs Respondent Guam Election Commission (the "GEC") to place the following question on the ballot in the November 2014 Guam General Election: "Shall the 'Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013' that provides for the medical use of cannabis be allowed . . . ?" Guam Pub. L. 32-134:4 (Feb. 16, 2014). The GEC expressed its view that Public Law 32-134 violates both the Organic Act and the Guam Code Annotated ("GCA"), and refused to put the question on the ballot. The Legislature requests that this court declare Public Law 32-134 to be valid and in compliance with the Organic Act and Guam law, and find that the GEC does not have the authority to refuse to place a measure on the ballot because the GEC views the measure to violate Guam law.

**[2]** We find that jurisdiction is proper pursuant to 7 GCA § 4104 to resolve the validity of Public Law 32-134, but not to address whether the GEC may refuse to comply with a law that it deems to be invalid. We hold that the legislative submission mechanism set forth in Title 3, Chapter 16 of the GCA constitutes a valid "referendum" within the meaning of the Organic Act, 48 U.S.C.A. § 1422a(a). We also find that Public Law 32-134, directing the question of the Compassionate Cannabis Use Act to be placed on the ballot, is a "legislative submission" that comports with the requirements of Title 3, Chapter 16 of the GCA.

## I. FACTUAL AND PROCEDURAL BACKGROUND

**[3]** On February 1, 2014, a majority of the Legislature voted to adopt Bill 215-32 (COR). This bill is entitled:

> An Act to provide for a binding referendum during the 2014 General Election to determine whether amendments to Title 10, Guam Code Annotated, to *add* a new Article 24 to Chapter 12, relative to allowing the medical use of cannabis, amending provisions of the Controlled Substances Act, providing penalties, and for other purposes, shall be allowed within Guam; to be known as the "Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013."

P.L. 32-134. The "Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013" ("the Act") proposed amendments to the GCA which would legalize the use of cannabis for certain medical purposes. *Id.* § 3. Bill 215-32 (COR) lapsed into law when the bill was not timely returned to the Legislature by the Governor in accordance with 48 U.S.C.A. § 1423i.

**[4]** The GEC received a letter from the Legislature directing it to place the Act on the November 2014 General Election ballot. In response, the GEC expressed its belief that "Guam law does not authorize it to place on the ballot for a referendum vote a question from the Legislature in the manner presented by Bill 215-32 (COR)." Pet'r's Req. for Declaratory J. ("Req."), Ex. C at 1 (Letter from GEC to Speaker Judith Won Pat, Mar. 7, 2014). The GEC stated that after carefully considering the question, it found that Bill 215-32 (COR) "presents a delegation of legislative law making authority not permitted by Guam law, and not authorized as a referendum measure." *Id.* The GEC believed "the question of the power of the Legislature to direct that a Bill be placed on the ballot as a referendum measure is an important issue" but recognized that it did "not have the power to directly petition the Supreme Court to consider this issue." *Id.* at 2.

**[5]** The Legislature filed a Request for Declaratory Judgment on May 14, 2014. This court granted attorney and Guam resident Howard Trapp leave to file an amicus brief in the case, but declined to allow him to participate in oral argument.

**[6]** The Legislature filed its Opening Brief on June 11, 2014. The GEC filed its Opening Brief on June 25, and the Legislature filed a Reply. This court heard the matter on August 4, 2014. Due to deadlines imposed upon ballot initiatives by the Guam Administrative Rules and Regulations ("GAR"), this court issued a Preliminary Order on August 5, 2014. *See* In re: Request of I Mina'Trentai Dos Na Liheslaturan Guåhan Relative to the Power of the Legislature to Prescribe by Statute the Conditions and Procedures Pursuant to Which the Right of Referendum of the People of Guam Shall be Exercised, CRQ2014-002 (Order at 1 (Aug. 5, 2014)); *see also* 6 GAR §§ 2115, 2129.

## II. JURISDICTION

**[7]** This court has jurisdiction over requests for declaratory judgment made by the Governor or the Legislature of Guam pursuant to 7 GCA § 4104. *In re Request of Governor Carl T. C. Gutierrez, Relative to the Organicity & Constitutionality of Pub. Law 26-35* ("*In re Request of Governor Gutierrez II*"), 2002 Guam 1 ¶ 5. As the party requesting a declaratory judgment, the Legislature must satisfy three jurisdictional requirements pursuant to this statute. 7 GCA § 4104 (2005). First, the subject matter of each issue submitted must be appropriate for review under 7 GCA § 4104. *Id.* Second, the issue must be one of great public importance. *Id.* Third, the issue must be one in which the normal process of law would cause undue delay. *Id.*

**[8]** The Legislature requests that this court rule on the following three issues: (1) whether a legislative submission is considered a "referendum" pursuant to 48 U.S.C.A. § 1422a(a); (2)

whether Title 3 GCA, Chapter 16 permits legislative submissions in the manner created by Public Law 32-134;[1] and (3) whether the GEC may decline to place a legislative submission on the ballot because it believes it to violate Guam law. Req. at 15-16.

**[9]** For a question to be appropriate for review under 7 GCA § 4104 and satisfy the first jurisdictional requirement, it must involve either "the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide," or "any question affecting the powers and duties of *I Maga'lahi* and the operation of the Executive Branch, or *I Liheslaturan Guåhan*, respectively." 7 GCA § 4104. The appropriateness of each question presented by the Legislature for review under 7 GCA § 4104 will be discussed below.

**[10]** The second jurisdictional requirement is that the issue must be one of great public interest. *Id.* This case involves the question of whether and how the Legislature may refer measures to voters, and impacts the fundamental right of the people of Guam to vote. Other state supreme courts have viewed similar questions to be of great importance in exercising original jurisdiction. *In re Hickenlooper*, 312 P.3d 153, 156 (Colo. 2013); *Opinion of the Justices*, 709 A.2d 1183, 1184 (Me. 1997); *Opinion of the Justices*, 682 A.2d 661, 664 (Me. 1996); *In re Janklow*, 530 N.W.2d 367, 368 (S.D. 1995); *Harriman v. City of Lebanon*, 446 A.2d 1158, 1159 (N.H. 1982) (transferred from the trial court). Moreover, this court has previously acknowledged that courts respect "the public importance of initiatives in exercising original jurisdiction over cases seeking a writ of mandate related to initiatives." *Cruz v. Guam Election Comm'n*, 2007

[1] Although the Legislature initially phrased this issue as whether it has the authority to "prescribe by statute the conditions and procedures pursuant to which the right of referendum of the People of Guam shall be exercised," Req. at 15, this question is not at issue. Instead, the Legislature focuses on the argument that Public Law 32-134 is a valid exercise of these conditions and procedures. *See* Pet'r's Br. at 11, 19-20 (June 11, 2014).

Guam 14 ¶ 4 (citations omitted); *see also Wade v. Taitano*, 2002 Guam 16 ¶ 15 n.9 ("[A] citizen's right to participate in the initiative process is fundamental . . . ."). Accordingly, we deem the questions in this case to be of great public importance, and find that the second jurisdictional requirement is satisfied.

**[11]** The third requirement is that the question presented must be one in which the normal process of law would cause undue delay. 7 GCA § 4104. The GEC is directed to place the question presented by Public Law 32-134 on the November 2014 General Election ballot. P.L. 32-134:2. Although this question could potentially be placed on a future ballot, we have held that "imminent statutory deadlines" relating to a ballot measure merit prompt attention and an exercise of original jurisdiction. *Cruz*, 2007 Guam 14 ¶ 4; *see also In re Janklow*, 530 N.W.2d at 369-70 (noting degree of urgency where "the election is scheduled to occur in less than four months"). The normal process of law would not permit this issue to be definitively resolved before the election in November 2014 and would thus result in undue delay. Therefore, we find that the third jurisdictional requirement is satisfied in this case.

## IV. ANALYSIS

### A. Principles of Statutory Construction.

**[12]** When examining questions of statutory interpretation, "the plain language of a statute must be the starting point." *In re Request of I Mina'Trentai Dos Na Liheslaturan Guåhan Relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund* ("*Trust Fund Question*"), 2014 Guam 15 ¶ 48 (quoting *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 14). However, "such language need not be followed where the result would lead to absurd or impractical consequences, untenable distinctions, or unreasonable results." *Sumitomo Constr.,*

*Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (quoting *Bowlby v. Nelson*, Civ. No. 83–0096A, 1985 WL 56583, at *2 (D. Guam App. Div. Sept. 5, 1985)).

**[13]** If a statute is ambiguous as to a certain term, courts will look to the legislative history in order to ascertain the legislative intent. *Burlington N. R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 461 (1987). "[I]n determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections." *Sumitomo Constr., Co.*, 2001 Guam 23 ¶ 17. Where a specific statute appears to conflict with a general statute, the more specific statute prevails. *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974). However, the court should interpret statutes as consistent where possible and give effect to all provisions. *Id.* at 551. In addition, we presume legislative enactments to be valid. *Trust Fund Question*, 2014 Guam 15 ¶ 38.

**B. Whether a Legislative Submission is Considered a "Referendum" Pursuant to 48 U.S.C.A. § 1422a(a).**

**[14]** The GEC argues that the "legislative submission" mechanism established by Guam law is an improper delegation of legislative authority that is not permitted by 48 U.S.C.A. § 1422a(a). Resp't's Br. at 2, 7 (June 25, 2014). It contends that the rights to initiative and referendum granted by the Organic Act are limited to measures initiated by Guam voters, and not by the Legislature. *Id.* at 7-9. It also asserts that legislative submissions violate the Organic Act's requirement that no bill shall become a law unless it has been duly "passed" by the Legislature. *Id.* at 6. The ultimate question – whether 48 U.S.C.A. § 1422a(a) authorizes the process of legislative submission – involves an interpretation of both local and federal law. Accordingly, it is appropriate for review and satisfies the first jurisdictional requirement of 7 GCA § 4104.

**1. Validity of measures referred by the Legislature for popular vote**

**[15]** The Organic Act states that "[t]he people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam." 48 U.S.C.A. § 1422a(a) (Westlaw through Pub. L. 113-163 (2014)). In accordance with this statute, local law has established three mechanisms involving the rights to initiative and referendum: the "initiative," the "referendum," and the "legislative submission." 3 GCA § 16102 (repealed and reenacted by Guam Pub. L. 31-255:2 (Dec. 11, 2012)). Under the GCA, "initiative" and "referendum" processes are initiated by voters, while the "legislative submission" originates with the Legislature. *Id.* Initiatives and referenda refer to the rights of voters to propose new legislation or repeal existing statutes, respectively. *Id.* "Legislative submission" is defined as "the power of the voters to approve or reject legislation which has been referred to them by [the Legislature]." 3 GCA § 16102(c).

**[16]** Because the ballot measure set forth in Public Law 32-134 was initiated by the Legislature, it does not involve the process of "initiative" or "referendum" under 3 GCA § 16102. *See* 3 GCA § 16102(a)-(b). Instead, Public Law 32-134 falls squarely within the definition of "legislative submission," as it consists of the Legislature's referral of legislation to voters for approval or rejection. *See* 3 GCA § 16102(c).

**[17]** The GEC contends that legislative authority may not be delegated without violating the separation of powers. *See* Resp't's Br. at 7. However, it is well established that legislatures may

give certain decision-making powers to the people.[2] *See generally City of Eastlake v. Forest City Enters., Inc.*, 426 U.S. 668, 672-73 (1976) (a referendum is not a delegation of power). While there are limits on a legislature's power to delegate, it is permissible for the people to exercise the right of referendum without running afoul of the separation of powers. *Id.* at 672; *Haskell v. Harris*, 669 F.3d 1049, 1056 (9th Cir. 2012). Congress's grant of the rights of initiative and referendum to Guam voters is a reflection of this principle, as any interpretation of "initiative and referendum" involves a grant of some lawmaking authority to the people through popular vote. *See* 48 U.S.C.A. § 1422a(a).

**[18]** Moreover, many states constitutionally provide for "legislative referendum" processes akin to Guam's legislative submission. *See, e.g.*, Mo. Const. art. 3, § 52(a); Okla. Const. art. 5, § 2; Or. Const. art. 4, § 1; S.D. Const. art. 3, § 1; Mont. Const. art. 3, § 5; Wash. Const. art. 2, § 1; *Initiative, Referendum and Recall Processes and Definitions*, Nat'l Conference of State Legislatures, http://www.ncsl.org/research/elections-and-campaigns/initiative-referendum-and-recall-overview.aspx (last visited Oct. 2, 2014) ("*Initiative, Referendum and Recall Processes and Definitions*"). Some of these processes involve the legislature's referral of formally enacted statutes to voters, while others involve referral of proposed amendments to the state constitution. *See* Mo. Const. art. 3, § 52(a); Okla. Const. art. 5, § 2; Or. Const. art. 4, § 1; S.D. Const. art. 3, § 1; Mont. Const. art. 3, § 5; Wash. Const. art. 2, § 1; Cal. Const. art. 18, § 1; Ronald H. Rosenberg, *Referendum Zoning: Legal Doctrine and Practice*, 53 U. Cin. L. Rev. 381, 387 (1984); *Initiative, Referendum and Recall Processes and Definitions*. Courts in these

[2] Legislatures may also delegate power to other branches or agencies. *See, e.g., United States v. Booker*, 543 U.S. 220, 242-43 (2005); *Mistretta v. United States*, 488 U.S. 361, 388 (1989); *Confederated Tribes of Siletz Indians of Or. v. United States*, 110 F.3d 688, 694 (9th Cir. 1997).

jurisdictions have recognized that legislatively-referred referenda to amend state statutes do not impermissibly delegate legislative authority. *See, e.g., Wyatt v. Kundert*, 375 N.W.2d 186, 190-91 (S.D. 1985) (holding that a legislative referendum is not an unconstitutional delegation of legislative power); *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 299 (Mo. 1996) (en banc) (acknowledging that "[r]eferendum is a constitutionally authorized method for the general assembly to delegate its legislative authority," but invalidating law that was not "referendum"); *MEA-MFT v. State*, 323 P.3d 198, 198 (Mont. 2014); *Amalgamated Transit Union Local 587 v. State*, 11 P.3d 762, 798 (Wash. 2000).[3]

**[19]** Therefore, it is clear the legislative submission mechanism does not inherently violate the separation of powers as an improper delegation of legislative authority. However, legislative submissions may nonetheless be invalid as a violation of local or federal law. In this case, the GCA explicitly authorizes legislative submissions. *See* 3 GCA §§ 16401-16402 (repealed and reenacted by P.L. 31-255:2). The U.S. Supreme Court and state supreme courts have found that legislatively-referred processes are not contrary to the U.S. Constitution. *See, e.g., Wyatt*, 375 N.W.2d at 190-91; *City of Eastlake*, 426 U.S. at 672. Accordingly, the only limit on legislative submissions in Guam would be imposed by the Organic Act.

**2. Construction of the term "referendum" in 48 U.S.C.A. § 1422a(a)**

**[20]** The Organic Act does not define the terms "initiative" or "referendum." The most common definition of the word "initiative" refers to measures initiated by the people

[3] While some courts have found referenda to be invalid delegations of legislative authority, *see Opinion of the Justices*, 725 A.2d 1082, 1090-92 (N.H. 1999); *Joytime Distribs. & Amusement Co. v. State*, 528 S.E.2d 647, 650-51 (S.C. 1999), these jurisdictions do not have statutory provisions reserving or granting the power of initiative and referenda to the people.

independent of legislatively-referred acts.[4] *See Black's Law Dictionary* 799 (8th ed. 2004); Cal. Const. art. 2, § 8(a); D.C. Code § 1-204.101(a) (2012); Pa. Const. art. 9, § 14; *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. 1982); *Initiative, Referendum and Recall Processes and Definitions*. Therefore, we look to whether a legislative submission would fall within the plain meaning of "referendum" in section 1422a(a).

**[21]** Black's Law Dictionary defines "referendum" as "[t]he process of referring a state legislative act, a state constitutional amendment, or an important public issue to the people for final approval by popular vote." *Black's Law Dictionary* 1307 (8th ed. 2004). This definition does not exclude legislative submissions as established by Title 3, Chapter 16 of the GCA.

**[22]** The National Conference of State Legislatures states that "[t]here are two primary types of referenda: *the legislative referendum, whereby the Legislature refers a measure to the voters for their approval*, and the popular referendum, a measure that appears on the ballot as a result of a voter petition drive." *Initiative, Referendum and Recall Processes and Definitions* (emphasis added). This general definition, encompassing two types of referenda, is reflected throughout state statutes and secondary sources. *See, e.g.*, Mo. Const. art. 3, § 52(a); Mont. Const. art. 3, § 5; S.D. Const. art. 3, § 1; Wash. Const. art. 2, § 1(b); *MEA-MFT*, 323 P.3d at 198; Ethan J. Leib, *Interpreting Statutes Passed Through Referendums*, 7 Election L.J. 49, 49-50 (2008); Chip Lowe, *Public Safety Legislation and the Referendum Power: A Reexamination*, 37 Hastings L.J. 591, 591-93 (1986); Rosenberg, 53 U. Cin. L. Rev. at 412. In addition, most states require a form of "legislative referendum" for amendment of the state constitution. *See* Rosenberg, 53 U.

[4] Although the Organic Act's legislation with respect to the Virgin Islands includes legislatively-referred "initiatives," this construction is contrary to most interpretations of the term. *See* 48 U.S.C.A. § 1593. This statute will be discussed further below.

Cin. L. Rev. at 387; *Initiative, Referendum and Recall Processes and Definitions*. Therefore, it is well established that the definition of "referendum" may include legislative submissions.

**[23]** The GEC argues that Congress's silence as to the scope of the "referendum" right in section 1422a(a) demonstrates that it did not intend to include measures referred by the Legislature. Resp't's Br. at 7-8. Although the Organic Act is largely silent on the scope of the term "referendum," silence does not necessarily call for a narrow interpretation. *See Weinberger v. Rossi*, 456 U.S. 25, 33, 36 (1982) (where otherwise undefined, the term "treaty" in a federal statute was not limited to Article II treaties, but included executive agreements as well).

**[24]** There are several indications that the Organic Act does not preclude the possibility of legislative submission, but even contemplates it. First, section 1422a(b) provides for a "referendum" election to remove government officials from office. It states that "[a]ny Governor, Lieutenant Governor, or member of the legislature of Guam may be removed from office *by a referendum election . . . . The referendum election shall be initiated by the legislature of Guam . . . .*" 48 U.S.C.A. § 1422a(b) (emphasis added). This subsection, which was amended at the same time as subsection (a), indicates that the Organic Act's definition of "referendum" may encompass legislatively-referred matters. *See* An Act to Authorize Appropriations for Certain Insular Areas of the United States, and for Other Purposes, Pub. L. No. 97-357, 96 Stat 1705 (1982) ("Pub. L. 97-357").

**[25]** Second, the legislative history of section 1422a does not express any intent to curtail the rights of initiative and referendum. The Senate report accompanying the enactment of section 1422a states that:

> Section 101 of the committee amendment would amend Section 7 of the Organic Act of Guam to provide for initiative and referendum and for the recall of the Lieutenant Governor and members of the Legislature. Section 7 presently provides a process only for the recall of the Governor. This language was requested by Guam and is necessary since the government of Guam may exercise only those powers provided under the organic legislation which does not authorize legislation by initiative. The Lieutenant Governor and members of the Legislature are elected and hold office pursuant to the organic legislation which similarly does not provide for recall of these officials as it does for the Governor.

S. Rep. No. 97-372, at 3 (1982). Although this language does not clearly indicate the intended scope of the word "referendum," it demonstrates that the rights of initiative and referendum were requested by Guam. Congress's grant of this request, without restrictions, signals that it intended to grant the Guam Legislature discretion in implementing the rights of initiative and referendum. *See* 48 U.S.C.A. § 1422a(a). As can be seen from the history of referenda, such a process can include the legislature submitting a question ultimately presented to the voters. *See* Part IV.B.1 above. Moreover, the rights of initiative and "popular referendum" are in many ways broader grants of authority than the legislative referendum, because they are initiated and passed solely by the people. Without any limiting language, it is unlikely that Congress intended to grant the former rights to the people of Guam while withholding the right to vote on measures referred by the Legislature. Therefore, we conclude that Congress intended to include, not exclude, the possibility of legislative referenda.[5]

**[26]** Next, Congress's grant to the Virgin Islands of the rights of initiative and recall provides some guidance on the scope of the rights granted by section 1422a, though the Virgin Islands

[5] The District Court of Guam has similarly interpreted section 1422a(a) as deferential to Guam law. *See Casino v. Guam Election Comm'n*, No. Civ. 06-00035, 2006 WL 3147659, at *1 (D. Guam Oct. 31, 2006) ("Th[e] language [of section 1422a(a)] makes clear Congress' intent to defer to Guam law on this issue [involving the rights to initiative and referendum].")).

were not granted the specific right of "referendum." The legislative history of the relevant Virgin Islands statute states that 48 U.S.C.A. § 1422a "provided similar authority to the people of Guam."[6] *See* S. Rep. No. 99-236, at 3 (1986). The statute provides: "The people of the Virgin Islands shall have the rights of initiative and recall to be exercised as provided in subsection (b) and subsection (c) of this section, respectively." 48 U.S.C.A. § 1593(a) (Westlaw through Pub. L. 113-163 (2014)). The statute then specifies in further detail the scope of these rights and the procedures that must be used. *Id.* Many of these provisions operate to limit Congress's grant of the rights in section 1593(a). *Id.* For example, subsection (b) states that "an initiative . . . shall not be used to repeal a law declared by the legislature at the time of passage to be an emergency law . . . ." and that "[a]n initiative shall address one subject only and matters reasonably related to that subject." 48 U.S.C.A. § 1593(b)(1), (3). Notably, Congress also stated that the Virgin Islands legislature "may submit its own version of the initiative to the voters." 48 U.S.C.A. § 1593(b)(6).

**[27]** This legislation demonstrates that Congress's understanding of the term "initiative" does not preclude legislatively-referred measures. By extension, the term "referendum" may have a similar breadth, especially because the term "referendum" more commonly encompasses legislatively-referred matters than the term "initiative." *See, e.g., Initiative, Referendum and Recall Processes and Definitions*. Moreover, the limitations and procedures specified in section 1593 stand in contrast to section 1422a(a), where Congress provided no guidance at all on the scope of Guam's initiative and referendum. Instead, section 1422a(a) states only that these rights

[6] Congress authorized the rights of initiative and recall in the Virgin Islands in 1986, after the addition of 48 U.S.C.A. § 1422a(a) in 1982. *See* S. Rep. No. 99-236 (1986).

shall be "exercised under conditions and procedures specified in the laws of Guam." 48 U.S.C.A. § 1422a(a). Although the legislative submission mechanism is not a "condition" or "procedure" under the plain meaning of either word,[7] the permissive language of section 1422a(a) indicates that Congress intended Guam law to provide for the scope of the rights to initiative and referendum, as well as the "conditions and procedures." *See id.* Therefore, we conclude that if Congress had wanted to exclude legislatively-referred measures in section 1422a(a), it would have done so explicitly.

**[28]** Finally, courts tend to interpret the power of the people to exercise initiative and referenda rights broadly, because they are viewed as reserved rights of the people. *See, e.g.*, *Parker v. City of Tucson*, 314 P.3d 100, 107 (Ariz. Ct. App. 2013); *Zaremberg v. Superior Court*, 8 Cal. Rptr. 3d 723, 726-27 (Ct. App. 2004); *State ex rel. Childress v. Anderson*, 865 S.W.2d 384, 387 (Mo. Ct. App. 1993); *State ex rel. Lemon v. Gale*, 721 N.W.2d 347, 356 (Neb. 2006). The GEC correctly points out that Guam differs from states because the Guam Legislature derives its authority from Congress and not from the people, *see* Resp't's Br. at 9, but we do not view this interpretive construction as dispositive. There is no indication that we must take the opposing position and construe the rights of initiative and referendum narrowly. Congress explicitly granted these rights to the people of Guam without restriction, and likely knew of the general propensity of states to construe such provisions broadly. If construed broadly, the right of referendum in section 1422a(a) would undoubtedly include legislative submissions. This fact

[7] *See Black's Law Dictionary* 312 (8th ed. 2004) ("condition"); *Black's Law Dictionary* 1241 (8th ed. 2004) ("procedure"). Instead of being a condition or a procedure, we view the legislative submission as an extension of the right to referendum.

supports our conclusion that the legislative submission mechanism set forth in Title 3, Chapter 16 of the GCA is a "referendum" within the terms of 48 U.S.C.A. § 1422a(a).

**3. Construction in accordance with 48 U.S.C.A. § 1423b**

**[29]** The GEC places great emphasis on 48 U.S.C.A. § 1423b, which states that "[n]o bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting . . . ." 48 U.S.C.A. § 1423b (Westlaw through Pub. L. 113-163 (2014)). The GEC stresses the unqualified language of this section in asserting that a bill may not be submitted to voters unless it is first formally "passed" by the Legislature. Resp't's Br. at 6. Because a legislative submission may become law without being passed, the GEC asserts that legislative submissions violate this statute. *See id.*

**[30]** When reading section 1423b along with the rest of the Organic Act, its language does not suggest that legislative submissions are inorganic. Section 1423b is entitled, "Selection and qualification of members; officers; rules and regulations; quorum." 48 U.S.C.A. § 1423b. The primary purpose of this section is to set the requirements for the Legislature's passage of bills, and not to limit the general powers of the Legislature or the people. Furthermore, the grant of the rights of initiative and referendum are specific exceptions to legislative authority and prevail over the more general requirements for the passage of legislation. *See Union Cent. Life Ins. Co. v. Wernick*, 777 F.2d 499, 501 (9th Cir. 1985); *Martin v. People*, 27 P.3d 846, 860 (Colo. 2001). Moreover, section 1423b was enacted before the rights of initiative and referendum were added

to the Organic Act in 1982.[8] *See* An Act to Provide for the Popular Election of the Governor of Guam, and for Other Purposes, Pub. L. No. 90-497, § 6(b) (1968) (adding the language of section 1423b); Pub. L. 97-357 (adding the rights of initiative and referendum). Therefore, it is not likely that Congress intended section 1423b to restrict these rights. Reading the Organic Act as a whole, it is apparent that section 1423b does not exclude legislative submissions as "referenda."

**[31]** California's statutory scheme is somewhat analogous to that of Guam. Like the Organic Act, California's constitution gives voters the right of referendum but does not mention whether this includes referenda submitted by the legislature. Cal. Const. art. 2, § 9. The language of the California constitution only discusses voter-initiated measures, indicating that "referendum" refers only to the "popular referendum" process. *See id.* Nonetheless, the California Election Code provides for legislatively-referred referenda. Cal. Elec. Code § 9040 (West 2003). Significantly, California's constitution also contains a provision similar to section 1423b, which states, "The Legislature may make no law except by statute and may enact no statute except by bill. . . . No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs." Cal Const. art. 4, § 8(b). Despite this language, this clause has not been construed to prevent California voters' right to legislative referendum.

**[32]** In this case, the bill which became law "by the affirmative vote of a majority of the members" of the Legislature present and voting was simply the bill to place the Act on the ballot. *See* 48 U.S.C.A. § 1423b. The Act itself will not become law by reason of a bill, but by

[8] Provisions granting the people of Guam the right of initiative and referendum were initially enacted in the GCA in 1977, although the Organic Act was not amended to allow these rights until 1982. Even so, the enactment of 48 U.S.C.A. § 1423b in 1968 preceded all of these amendments.

enactment by a majority of the valid votes cast at the 2014 General Election. *See* 3 GCA § 16402. Therefore, the requirements of section 1423b are not triggered and do not apply.

**4. Conclusion**

**[33]** We find that when reading the Organic Act comprehensively and in accordance with canons of statutory interpretation, the term "referendum" may include a process initiated by the Legislature such as the legislative submission. There is no indication in the text or legislative history of the Organic Act that Congress granted the people of Guam the rights of initiative and referendum, but not the right to vote on measures referred by the Legislature. Once Congress gave the people of Guam the rights of initiative and referendum, it did not restrict these rights in any way, but instead left the conditions and procedures of the rights to be determined by Guam law.[9] Therefore, we hold that the legislative submission mechanism is consistent with the Organic Act.

**C. Whether Title 3, Chapter 16 of the GCA Permits Legislative Submissions in the Manner Prescribed by Public Law 32-134.**

**[34]** The GEC argues that Title 3, Chapter 16 of the GCA does not "permit the Guam Legislature to submit a proposition, as opposed to a law that it has adopted, to the voters for approval" as a legislative submission. Resp't's Br. at 1. This question involves an interpretation of local law, and therefore satisfies the first jurisdictional requirement of 7 GCA § 4104 as an appropriate question for review.

[9] At oral argument, counsel for the Legislature pointed out that a legislative submission presented in a manner similar to the one at issue had been submitted to voters in the past, although it was not challenged. *See* An Act to Put a Proposal Before the People of Guam as an Initiative Measure to Limit the Membership of the Guam Legislature to Fifteen Members, Guam Pub. L. 23-001 (Mar. 30, 1995) (codified as amended at 3 GCA § 6101 (2005)).

**[35]** The issue in this case arises from the fact that the Legislature enacted Public Law 32-134 instead of the Act itself. Public Law 32-134 contains only six sections. Essentially, it directs the GEC to "put to the voters the question described in Section 4" in the 2014 General Election. P.L. 32-134:2. Section 4 states that:

> The question put to voters *shall* be:
> "Shall the 'Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013' that provides for the medical use of cannabis be allowed?
> ( ) Yes
> ( ) No
> Vote for only 'Yes' or 'No'."

*Id.* § 4. According to Public Law 32-134, this question will determine whether the Act "*shall* be allowed within Guam via a referendum certified by the Guam Election Commission as eligible for a binding referendum vote." *Id.* § 3. It then states that "*[i]f* the referendum is approved, the [Act] *shall* take effect ninety (90) days after its approval has been certified by the Guam Election Commission." *Id.* § 6.

**[36]** The GEC argues that it may not place the Act on the ballot because Public Law 32-134 presents the Act as a proposal for voters to approve or reject, instead of a law formally passed by the Legislature. Resp't's Br. at 5. It argues that this submission is in violation of the requirement in Chapter 16 that all measures submitted to voters be "adopted" by the Legislature. *Id.* at 4-5.

**[37]** The operative statutes in this case are 3 GCA §§ 16102(c), (d), and 16401. Section 16102(c) defines "legislative submission" as "the power of the voters to approve or reject legislation which has been referred to them by *I Liheslatura* (the Legislature)." 3 GCA § 16102(c). The plain meaning of the term "legislation" is not restricted to duly enacted laws and

may include proposals or matters pending before a legislature. *See Black's Law Dictionary* 918 (8th ed. 2004) (citing one definition of "legislation" as "[a] proposed law being considered by a legislature"); 40 C.F.R. § 1508.17 (Westlaw through 2014); Ohio Rev. Code Ann. § 101.70 (Westlaw through 2014); *United States v. Harriss*, 347 U.S. 612, 615-19 (1954) (discussing lobbying as it relates to "legislation" pending before Congress). Thus, although the Act itself was not formally enacted, it may be considered "legislation" within the definition of a legislative submission. For this reason, Public Law 32-134 comports with 3 GCA § 16102(c).

**[38]** Section 16102(d) defines "measure" as "the action proposed or *question presented* on the initiative, referendum or legislative submission." 3 GCA § 16102(d) (emphasis added). This language demonstrates that the legislature need not formally pass a law before it may submit it to voters for approval or rejection. The question set forth in Section 4 of Public Law 32-134 is by its terms a "question presented" to voters on the legislative submission. Therefore, the question of whether the "'Joaquin (KC) Concepcion II Compassionate Cannabis Use Act of 2013' that provides for the medical use of cannabis [shall] be allowed," P.L. 32-134:4, constitutes a "measure" within the definition of 3 GCA § 16102(d).

**[39]** Lastly, section 16401 states that "[n]o measure shall be submitted to the voters by *I Liheslaturan Guåhan* unless it shall have been *adopted* by a majority of affirmative votes of all the Members." 3 GCA § 16401 (second emphasis added). This section does not refer to "legislation" that is referred to voters pursuant to section 16102(c), but rather to a "measure" as defined in section 16102(d). The question presented in Section 4 of Public Law 32-134 – the "measure" in this case – is within the text of Public Law 32-134, which was formally passed by a majority of affirmative votes of all members of the Legislature. *See* 48 U.S.C.A. § 1423b; 3

GCA § 16401. Therefore, the measure was "adopted" by the Legislature when it passed Public Law 32-134.[10]

**[40]** Under the clear language of section 16401, the Act itself (the "legislation") need not be "adopted" by the Legislature. In addition, the Act need not comport with 48 U.S.C.A. § 1423b. As discussed above, section 1423b applies to the general legislative process pursuant to which a bill becomes a law and not to the process of adopting, rejecting or repealing law by exercising the power of initiative and referendum. The legislative action in this case – Public Law 32-134 and the "measure" it contains – comports with the requirements of a legislative submission. Accordingly, we find that it is valid and in compliance with the Organic Act and Guam law.

### D. Whether the GEC May Decline to Place a Legislative Submission on the Ballot Because it Believes the Legislative Submission to Violate Guam Law.

**[41]** The third question presented, whether the GEC may refuse to place a measure on the ballot that it deems to be in violation of the Organic Act and Guam law, is not an appropriate matter for review under 7 GCA § 4104. The question of whether the GEC's duty to place measures on the ballot is discretionary or ministerial depends on the larger question of whether officials charged with ministerial duties may choose not to comply with a law because they deem the law to be invalid.

**[42]** This court is limited to addressing questions involving statutory interpretation, or questions of the powers and duties of the Legislature or the Governor. *See* 7 GCA § 4104. The

[10] No party in this case disputes that Public Law 32-134 was properly passed, or "adopted" under any definition of the term. Although the term "adopt" does not always equate to formal passage of a law, *see Black's Law Dictionary* 1155 (8th ed. 2004); *Arminion v. Butler*, 440 A.2d 757, 760-61 (Conn. 1981) (distinguishing between "passage" of law and "adoption" of a budget), the measure in this case meets even the narrower definition, as it was formally enacted by the Legislature in Public Law 32-134. *See, e.g.*, *Wasserman v. District of Columbia*, 959 A.2d 1139, 1140 (D.C. Ct. App. 2008); *Langevin v. Begin*, 683 A.2d 357, 358 (R.I. 1996).

third question presented does not involve the powers and duties of the Legislature or the Governor, but of the GEC. Moreover, the question is not truly one of statutory interpretation, but is a legal question that primarily involves a review of case law. Therefore, we will not exercise jurisdiction to address in a declaratory judgment action whether the GEC has the authority to refuse to place a measure on the ballot because the GEC views the measure to violate Guam law.

## V. CONCLUSION

**[43]** We hold that the "legislative submission" process set forth in 3 GCA §§ 16102 and 16401 is considered a "referendum" within the meaning of the Organic Act, 48 U.S.C.A. § 1422a(a). In addition, we hold that Public Law 32-134 is a "legislative submission" within Title 3, Chapter 16 of the GCA.[11] This law complies with the requirements of 3 GCA §§ 16102 and 16401, because it contains a duly adopted "measure" that presents voters with the question of whether the Act may be adopted or rejected. Therefore, Public Law 32-134 is in compliance with both Guam law and the Organic Act.

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Chief Justice

[11] As a legislative submission under Guam law, the conditions and procedures of the legislative submission process set forth in the GCA and GAR govern, including the number of votes to approve a legislative submission provided for in 3 GCA § 16402.